

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

TOI L. MELVIN,

Petitioner,

v.

3:07-cr-138

3:13-cv-345

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM

This is a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. Petitioner pleaded guilty to three counts of distributing five grams or more of crack cocaine and was sentenced to concurrent terms of imprisonment of 262 months. Petitioner appealed his sentence and that appeal remains pending.

Absent extraordinary circumstances, a district court is precluded from entertaining a § 2255 motion while a direct appeal from the same conviction is still pending. *Capaldi v. Pontesso*, 135 F.3d 1122, 1124 (6th Cir. 1998). This case presents no extraordinary circumstances compelling district court review at this time. Accordingly, the motion to vacate, set aside or correct sentence will be **DENIED** and this action **DISMISSED WITHOUT PREJUDICE**.

The court will **CERTIFY** that any appeal from this action would not be taken in good faith and would be totally frivolous. A certificate of appealability **SHALL NOT ISSUE**. 28 U.S.C. § 2253. The court will **DENY** the petitioner leave to proceed *in forma pauperis* on appeal. *See* Rule 24 of the Federal Rules of Appellate Procedure.

AN APPROPRIATE ORDER WILL ENTER.

s/ Thomas W. Phillips
United States District Judge